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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,574	11/13/2003	David S. Ruch	10031US	8790
<div>7590 12/02/2008</div> <div>William D. McSpadden BAKER & McKENZIE 2300 Trammell Crow Center 2001 Ross Avenue Dallas, TX 75201</div> <div>EXAMINER ARAJ, MICHAEL J</div> <div>ART UNIT 3775 PAPER NUMBER</div> <div>MAIL DATE 12/02/2008 DELIVERY MODE PAPER</div>				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/712,574

Applicant(s)

RUCH ET AL.

Examiner

MICHAEL J. ARAJ

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 and 37-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 and 37-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 -34 and 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Mata et al. (U.S. Patent No. 5,891,144).

Mata et al. disclose an apparatus that can be made with plastic comprising an external fixator having a first longitudinal axis, wherein a first end portion of the external fixator comprises a first bone connector assembly and a second end portion of the external fixator comprises a second bone connector assembly, the first and second bone connector assemblies each being operable to releasably couple to at least one bone pin; a first clamp assembly comprising a bracket operable to removably mount to an external fixator and couple to a connector rod comprising a clamp assembly base seated on the bracket and a clamp assembly head disposed over the clamp assembly base, as well as including a second clamp assembly operable to releasably couple to at least one bone pin embedded in a bone. The connector rod is operable to join the first clamp assembly to the second clamp assembly (see Fig. 1 below). The connector rod is also in an elevated position relative to the external fixator to permit extension of the connector rod across a human's extremity in the radial to ulnar direction. The external fixator is attachable to a human's radius and the second clamp is coupled to a bone pin

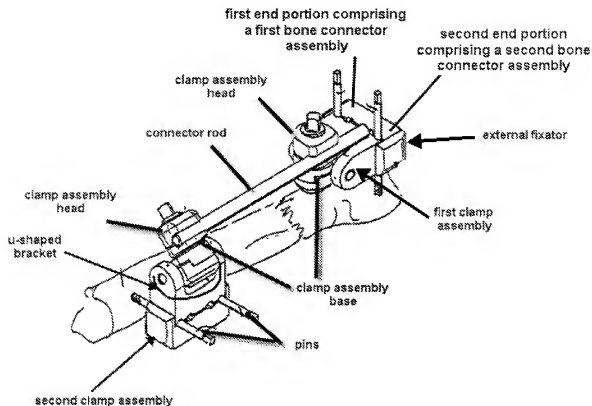
that is embeddable to at least one metacarpal bone of a human (Col. 3, paragraph 2).

The first clamp assembly comprises an assembly clamp operable to attach to a longitudinal member of an external fixator and a clamp assembly head operable to secure the assembly clamp and a connector rod fastener. It also comprises a U-shaped bracket operable to attach to a rod. The second clamp assembly comprises a fastener operable to releasably engage at least one bone pin embedded in a bone and operable to releasably hold the connector rod and clamp assembly head. The second clamp assembly is also rotatable with the use of an additional external fixator as seen in Figure 3. The apparatus is positioned to reduce bony fragments and maintain bony fragments in position. The rod comprises a first end operable to slidably attach to the first assembly clamp and a second end having a body operable to engage the second assembly clamp. The head of the second clamp assembly is deemed circular because it has an oval like appearance from the side profile that has a central opening where the rod can be engaged. With regard the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Mata et al. which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus

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satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). Specifically, the connector rod fastener is able to permit extension of the connector rod across a human's extremity in the radial to ulnar direction if one desired to do so.

Mata et al. also discloses a method of maintaining a human's wrist in a healing position comprising attaching an external fixator to the radius bone of a wrist, releasably attaching a first clamp assembly to the external fixator, releasably attaching a second clamp assembly to at least one bone pin embedded in a bone of a human and joining the first clamp and second clamp assembly with a connector rod. This device will limit the degree of supination and pronation of a human's radius and ulna bones by positioning the clamps and connector rods relative to the human's radius and ulna bones by the way it is attached to the human bone of the radius bone and metacarpals.

**Figure 1*****Response to Arguments***

Applicant's arguments filed August 28, 2008 have been fully considered but they are not persuasive. Applicant argues that Mata does not disclose a clamp assembly operable to provide a third point of attachment. It can be seen that the device of Mata has multiple holes through the external fixator which can allow multiple points of attachment. In this specific embodiment there are 8 holes in the two clamp assembly which would allow up to 8 attachment points. It is unclear how the applicant interprets

how the present application has a third point of attachment and that Mata only is considered to have two points of attachment.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL J. ARAJ** whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Araj/

Examiner, Art Unit 3775

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733